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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/044,410	01/10/2002	James R. Stolpmann	8266-0752	8926

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Intellectual Property Group
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EXAMINER

LUU, TUYET PHUONG PHAM

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 02/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/044,410

Applicant(s)

STOLPMANN, JAMES R.

Examiner

Teri P. Luu

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-78 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-78 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 15.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 3, 7-13, 15, 16, 20-23, 25-27, 56-58, 62-65 and 67-71 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 6,286,167 to Stolpmann in view of Hall.

Stolpmann discloses a mattress comprising a non-puncture resistant cover (12, 14) having an interior surface and a core disposed adjacent the interior surface including a body. The body (18) defines a plurality of mounting locations (22), each location including an enclosure. Stolpmann discloses, at col. 3, lines 49-54, that pre-inflated air bags or bags coupled to a pressure source may be disposed within the plurality of enclosures. Stolpmann fails to disclose the air bags being self-sealing. However, Hall teaches that it is well known in the art to form fluid containers from self-sealing sheeting such that in the event of puncture leakage is prevented. Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the air bags as self-sealing so as to be capable of resealing in the event of puncture to prevent leakage.

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Stolpmann discloses a mattress comprising a core including a plurality of enclosures (i.e., the air bags). Each enclosure is affixed to an adjacent enclosure via the sleeves (22). Stolpmann further discloses the body including an upper layer (44) and a lower layer (28) connected at a plurality of parallel seams (46). The core includes an upper layer (44) and a lower layer (28) connected at a plurality of parallel seams (46).

Stolpmann fails to disclose the containers and enclosures, respectively, being cylindrical. However, Stolpmann discloses cylindrical-shaped foam inserts contained within the enclosures. One of ordinary skill in the art would have found it obvious to also provide the air bags with cylindrical shapes.

Claims 4, 17, 40-44, 46, 47 and 59 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of Stolpmann in view of Hall as applied to claim 1 above, and further in view of Steensen.

Stolpmann, as modified, discloses the body being formed of a shear material. However, it is silent as the specific type of material, e.g., non-stretchable fabric or non-stretchable film. Steensen discloses a mattress comprising a body (65) defining a plurality of mounting locations (69). Each mounting location includes an enclosure and a gas container (42) disposed therein. The body is formed of a textile material such as polyester cotton flannel, nylon or olefin (col. 4, lines 40-47 and col. 5, lines 4-6). Steensen discloses that the purpose of the enclosure is "to prevent the squeaking noises typically created when vinyl air tubes rub against each other." One of ordinary skill in the art, concerned with preventing squeaking noises within the mattress, would have found it obvious to form the body from a non-stretchable material, as taught by Steensen.

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Claims 5, 6, 18, 19, 48-52, 54, 55, 60 and 61 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of Stolpmann in view of Hall as applied to claims 4 and 17 above, and further in view of U.S. Patent No. 4,768,249 to Goodwin.

Stolpmann, as modified, discloses the claimed invention except for the non-stretchable material being one of substantially non-stretchable fabric and substantially non-stretchable film. Goodwin discloses a patient support structure comprising a plurality of inflatable sacks. The sacks are formed of substantially non-stretchable fabric (e.g., twill woven nylon) and substantially non-stretchable film (e.g., urethane coating). Thus, Goodwin teaches the use of non-stretchable fabric and non-stretchable film in the bedding art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the non-stretchable material as substantially non-stretchable fabric and substantially non stretchable film so that the body is "gas-tight and capable of being heat sealed and laundered," as taught by Goodwin.

Claims 28, 29, 33, 34, 35, 36, 38, 39 and 73-78 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of Stolpmann in view of Hall and Cardinale.

Stolpmann, as modified by Hall, discloses the claimed invention except for a frame and side rails connected to the frame on which the mattress is supported. Cardinale discloses a bed comprising a frame and side rails connected to the frame. It is well known in the bedding art to support mattresses on frames. Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the mattress on a frame with side rails so as to provide "guarding protection lengthwise of the bed," as taught by Cardinale.

Claims 30-32 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of Stolpmann in view of Hall and Cardinale as applied to claim 28 above, and further in view of Steensen.

Stolpmann, as modified, discloses the body being formed of a shear material. However, it is silent as the specific type of material, e.g., non-stretchable fabric or non-stretchable film. Steensen discloses a mattress comprising a body (65) defining a plurality of mounting locations (69). Each mounting location includes an enclosure and a gas container (42) disposed therein. The body is formed of a textile material such as polyester cotton flannel, nylon or olefin (col. 4, lines 40-47 and col. 5, lines 4-6). Steensen discloses that the purpose of the enclosure is "to prevent the squeaking noises typically created when vinyl air tubes rub against each other. " One of ordinary skill in the art, concerned with preventing squeaking noises within the mattress, would have found it obvious to form the body from a nylon material, as taught by Steensen.

Claims 14, 24, 37, 45, 53, 66 and 72 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of Stolpmann in view of Hall as applied to claims 1, 23, 56 and 67 above, Stolpmann in view of Hall and Cardinale as applied to claims 36 above, Stolpmann in view of Hall and Steensen as applied to claims 44 above, Stolpmann in view of Hall and Goodwin as applied to claim 52 above, and all in further view of Taylor.

Stolpmann, as modified, discloses the claimed invention except for one of the containers being pressurized to a first pressure and other of the containers being pressurized to a second pressure that is different from the first pressure. Taylor discloses a body support comprising a first container being pressurized to a first pressure and a second container being pressurized to

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a second pressure that is different from the first pressure so as to provide continuous variable pressure points for a cushion which supports a person. It would have been obvious to one having ordinary skill in the art at the time the invention was made to pressurize the first container to a first pressure and to pressurize the second container to a second pressure that is different from the first pressure so as to provide continuous variable pressure points, as taught by Taylor.

Response to Arguments

Applicant's arguments with respect to claims 1 and 3-78 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Teri Pham Luu** whose telephone number is **(703) 305-7421**. The examiner can be best reached Monday-Friday from 6:30 am to 2:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Heather Shackelford**, can be reached at **(703) 308-2978**.

Submission of your response by facsimile transmission is encouraged. Technology Center 3600's facsimile number for all official papers is **(703) 872-9306**. Recognizing the fact that reducing cycle time in the processing and examination of patent applications will effectively increase a patent's term, it is to your benefit to submit responses by facsimile transmission whenever permissible. Such submission will place the response directly in our examining group's hands and will eliminate Post Office processing and delivery time as well as the PTO's mail room processing and delivery time. For a complete list of correspondence not permitted by facsimile transmission, see MPEP § 502.01. In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be submitted by facsimile transmission. Responses requiring a fee which applicant is paying by check should not be submitted by facsimile transmission separately from the check.

Responses submitted by facsimile transmission should include a Certificate of Transmission (MPEP § 512). The following is an example of the format the certification might take:

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I hereby certify that this correspondence is being facsimile transmitted to the
Patent and Trademark Office (Fax No. _____) on (Date) _____

(Typed or printed name of person signing this certificate)

(Signature)

If your response is submitted by facsimile transmission, you are hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and MPEP § 502.02). Please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response after your response has been transmitted by facsimile will only cause further unnecessary delays in the processing of your application; duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be directed to **heather.shackelford@uspto.gov**.

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed expressed waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature relating to the status of this application should be directed to the group receptionist at **(703) 308-2168**.

Teri Pham Luu
Primary Examiner

tpl
February 23, 2004